

DIRECTOR OF CENTRAL INTELLIGENCE

Security Committee

SECOM-D-128

5 March 1980

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NOTE FOR:

FROM:

SUBJECT: Re Navy Proposal for an APEX Secrecy Agreement

1. Some general comments:

a. Do our decisions at our Tuesday 4 March meeting negate the need to review, entertain or propose adoption by the APEX Steering Group of secrecy agreements drafted by participants, a la Navy's (attached)?

b. I was of the opinion that the conclusion reached at that meeting was for APEX participants to use the unmodified version of the current SCI agreement until General Counsels reached agreement on a desirable format for a single APEX agreement.

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c. A 5 March discussion with [redacted] resulted in the following information about the tack that he, working with Bruce Clarke, is taking:

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1. [redacted] has a copy of the 4 page "baby talk" agreement and has been tasked by Silver to review it.

2. All beneficial aspects of the recent Supreme Court decision in the [redacted] case are being reviewed for inclusion in such an agreement.

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3. [] is sanguine about early completion of this review. He hopes to end up with an agreement that incorporates the best of features and that will be accepted by the Steering Group as the common set of terms. Those departments such as CIA and NSA that want to use the agreement as an EOD document will be free to add on. If the military wants to say that the agreement should include an order not to reveal APEX under threat of court martial, they can add that language. If NSA wants to incorporate travel prohibitions for its employees, they can add on as desired.

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4. [] is in contact with NSA and DIA/DoD general counsels and the final product will be one reflecting coordination in the legal elements.

2. Some specific comments on Navy's agreement (recognizing that I am not a lawyer and the following are personal observations as a Security Advisor).

a. Re para 2 - it is doubtful that any "Employee" could acknowledge with reliability and honest conviction that "he/she has been made fully knowledgeable as to how APEX information is to be handled, stored and transmitted and to whom such information may be given." Certainly all he's/she's will not be told how to handle [] APEX and will not have readily available to them an exhaustive list of all people "to whom such information may be given." Thus they couldn't be held responsible for such terms.

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b. Re paragraph 3 - the last sentence seems to be a nonsequitur. I know what is meant but I don't believe the wording contained here expresses it. Maybe the addition of a sentence: The release by the Government of such information does not relieve me of my responsibility not to discuss APEX material.

c. Re paragraph 4 - I believe that we had better change the first sentence, dropping the phrase "...at the demand of the Government," and adding, "...when access is no longer required in performance of official employment." I am sure there will be many "administrative debriefings that would preclude opportunity for a "demand" to return material.

d. Re paragraph 5 - suggest we drop the second sentence. No need to tell anyone why the review will be made, no reason to limit the review to APEX.

3. A suggestion - thank Navy and tell them their proposed agreement is going to the APEX Legal Advisor for appropriate consideration. Then send it to FI to saying it is a gratuitous submission from Navy and that it has no endorsement of the APEX Steering Group as a recommended, preferred or even desirable agreement.

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